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7 OFFICIAL COMMITTEE OF
UNSECURED CREDITORS,
8 Plaintiff,
9 v.
10 PG&E CORPORATION,
11 Defendant.

Case No. 20-cv-04570-HSG

**ORDER AFFIRMING BANKRUPTCY
COURT'S RULINGS ON
POSTPETITION INTEREST**

Re: Dkt. No. 15

12
13 Pending before the Court is Appellant Ad Hoc Committee of Holders of Trade Claims'
14 appeal of the Bankruptcy Court's Confirmation Order. Dkt. No. 15 ("Appellant's Brief") and Dkt.
15 No. 23 ("Reply Brief"). Specifically, Appellant appeals the Bankruptcy Court's rulings regarding
16 postpetition interest, which were incorporated by the Bankruptcy Court in its Confirmation Order.
17 Dkt. No. 1-4 at 29. These prior rulings were set out in the Memorandum Decision Regarding
18 Postpetition Interest, Dkt. No. 1-5 ("PPI Memorandum"), and the Interlocutory Order Regarding
19 Postpetition Interest, Dkt. No. 1-6 ("PPI Order"). Appellees PG&E Corporation and Pacific Gas
20 and Electric Company (collectively, "Debtors") oppose the appeal. Dkt. No. 21 ("Appellees'
21 Brief"). For the following reasons, the Court **AFFIRMS** the Bankruptcy Court's rulings on
22 postpetition interest.

23 **I. BACKGROUND**

24 **A. PG&E's Bankruptcy and Chapter 11 Plan**

25 On January 29, 2019, the Debtors commenced voluntary cases for relief under chapter 11
26 of title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court
27 for the Northern District of California ("Bankruptcy Court"). Significantly, the Debtors needed to
28 propose a plan of reorganization that satisfied the requirements of A.B. 1054, including its June

1 30, 2020 deadline for plan confirmation. In light of the “increased risk of catastrophic wildfires,”
2 A.B. 1054 created the “Go-Forward Wildfire Fund” as a multi-billion dollar safety net to
3 compensate future victims of public utility fires and thereby “reduce the costs to ratepayers in
4 addressing utility-caused catastrophic wildfires,” support “the credit worthiness of electrical
5 corporations,” like the Debtors, and provide “a mechanism to attract capital for investment in safe,
6 clean, and reliable power for California at a reasonable cost to ratepayers.” A.B. 1054 § 1(a). For
7 the Debtors to qualify for the Go-Forward Wildfire Fund, however, A.B. 1054 required, among
8 other things, the Debtors to obtain an order from the Bankruptcy Court confirming a plan of
9 reorganization by June 30, 2020. *See* A.B. 1054 § 16, ch. 3, 3292(b). After more than sixteen
10 months of negotiations among a variety of stakeholders, and following confirmation hearings that
11 spanned several weeks, the Debtors’ Plan of Reorganization dated June 19, 2020 (“Plan”)¹ was
12 confirmed by the Bankruptcy Court on June 20, 2020 and became effective on July 1, 2020
13 (“Effective Date”).

14 **B. The Postpetition Interest Dispute**

15 Prior to confirmation, the Bankruptcy Court considered arguments from Debtors and
16 Appellant, among others, about the applicable postpetition interest to be paid to four classes of
17 allowed unsecured and unimpaired claims. PPI Memorandum at 1. Debtors argued that creditors
18 in the four classes should receive interest calculated pursuant to 28 U.S.C. § 1961(a) (“the Federal
19 Interest Rate”), relying on the Ninth Circuit’s decision in *In re Cardelucci*, 285 F.3d 1231 (9th
20 Cir. 2002) (“*Cardelucci*”). *Id.* at 1-2. Certain creditor groups, including the Official Committee
21 of Unsecured Creditors, the Ad Hoc Committee of Senior Secured Noteholders of Pacific Gas and
22 Electric Company, and Appellant, argued that under California law, contract-based claims accrue
23 interest at a contractual rate, and in the absence of such a rate, at the statutory rate of 10%. *See*
24 Cal. Civ. Code § 3289.

25 On December 30, 2019, the Bankruptcy Court ruled that “the Debtors are correct,
26 that *Cardelucci* controls and that the Federal Interest Rate applies to any Plan.” PPI Memorandum

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28 ¹ Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the
Plan.

1 at 2. On February 6, 2020, the Bankruptcy Court entered the PPI Order. In the PPI Order, the
2 Bankruptcy Court again “conclude[d] that the Debtors are correct, that *In re Cardelucci*, 285 F.3d
3 1231 (9th Cir. 2002) controls and that the Federal Interest Rate applies to the postpetition
4 treatment of unsecured creditors under any Chapter 11 Plan of Reorganization proposed by
5 Debtors.” PPI Order at 2.

6 Appellant then filed a motion for leave to appeal in this Court. The Court found that the
7 PPI Memorandum and Order did not constitute a final order for purposes of appeal and denied
8 Appellant’s request for leave to appeal. *See Ad Hoc Comm. of Holders of Trade Claims v. PG&E*
9 *Corp.*, 614 B.R. 344 (N.D. Cal. 2020) (“*Ad Hoc Comm.*”).

10 **II. LEGAL STANDARD**

11 District courts have jurisdiction to hear appeals from final judgments, orders, and decrees
12 of bankruptcy judges. 28 U.S.C. § 158. A district court reviews a bankruptcy court’s decision by
13 applying the same standard of review used by circuit courts when reviewing district court
14 decisions. *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). The district court reviews the
15 bankruptcy court’s findings of fact for clear error and its conclusions of law de novo. *In re*
16 *Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001).

17 **III. DISCUSSION**

18 In its prior order on Appellant’s motion for leave to appeal, the Court considered the same
19 arguments offered by Appellant in the current appeal. *Ad Hoc Comm.*, 614 B.R. at 354-357.
20 Despite Appellant’s attempts, then and now, to narrow the scope of the Ninth Circuit’s holding in
21 *Cardelucci*, the Court continues to agree with the Bankruptcy Court “that *Cardelucci* ‘controls’
22 the issue of postpetition interest payable under the Plan.” *Id.* at 355. As discussed in the prior
23 order, *id.*, the Ninth Circuit framed the issue in *Cardelucci* as “present[ing] the narrow but
24 important issue of whether such post-petition interest is to be calculated using the federal
25 judgment interest rate or is determined by the parties’ contract or state law.” *Cardelucci*, 285 F.3d
26 at 1233. The Ninth Circuit’s holding remains clear: “Where a debtor in bankruptcy is solvent, an
27 unsecured creditor is entitled to ‘payment of interest at the legal rate,’” and “Congress intended
28 ‘interest at the legal rate’ in 11 U.S.C. § 726(a)(5) to mean interest at the federal statutory rate

1 pursuant to 28 U.S.C. § 1961(a).” *Id.* at 1234. In support of this holding, the Ninth Circuit
2 observed that application of the lower federal judgment rate did not violate an unsecured creditor’s
3 substantive due process rights, and that using that rate for all claims was “rationally related to
4 legitimate interests in efficiency, fairness, predictability, and uniformity within the bankruptcy
5 system.” *Id.* at 1236.

6 Appellant attempts to distinguish *Cardelucci* by arguing that the plan in that case involved
7 impaired claims, while the Debtors’ Plan here proposes to leave general unsecured claims
8 unimpaired, such that Section 726(a)(5) of the Bankruptcy Code—the section cited in *Cardelucci*
9 to derive the “legal rate” for postpetition interest—is inapplicable. Appellant’s Br. at 2-3, 17-18,
10 29-33; Reply at 6-12.

11 Appellant’s contention that the Ninth Circuit’s decision in *Cardelucci* is not controlling
12 authority—and only applicable to a narrow set of facts—is unavailing. To the extent that
13 Appellant believes that the Ninth Circuit never intended its ruling to apply to unimpaired
14 claims, *Cardelucci* certainly does not say that. While the Ninth Circuit pinpointed a “narrow but
15 important issue,” it did not narrow the application of its holding. The “narrow but important
16 issue” *Cardelucci* resolved is what “legal rate” applies to postpetition interest in a solvent debtor
17 case. 285 F.3d at 1234 (“Where a debtor in bankruptcy is *solvent*, an *unsecured creditor* is
18 entitled to ‘payment of interest at *the legal rate* from the date of the filing of the petition’ prior to
19 any distribution of remaining assets to the debtor.”) (emphasis added) (citation omitted). That is
20 precisely the issue resolved in the PPI Memorandum and Order.

21 The application of the federal rate to Appellant’s claims is further supported by the Ninth
22 Circuit’s reasoning in *Cardelucci*. The Ninth Circuit explained that “[u]pon the filing of the
23 bankruptcy petition, creditors with a claim against the estate must pursue their rights to the claim
24 in federal court and entitlement to a claim is a matter of federal law.” *Id.* at 1235. “As of the date
25 of the filing of the petition, creditors hold a claim, similar to a federal judgment, against the estate,
26 the payment of which is only dependent upon completion of the bankruptcy process.” *Id.* “In this
27 respect, the purpose of post-petition interest makes the award analogous to an award of post-
28 judgment interest.” *Id.* “It has long been the rule that an award of post-judgment interest is

1 procedural in nature and thereby dictated by federal law.” *Id.* Nothing in this explanation
2 suggests that the Ninth Circuit intended an exception for unimpaired claims, as urged by
3 Appellant. Appellant’s Br. at 20-25. On the contrary, the Ninth Circuit’s reasoning supports its
4 observation that “applying a single, easily determined interest rate to *all* claims for post-petition
5 interest ensures equitable treatment of creditors.” *Id.* (emphasis added). While Appellant cites a
6 number of out-of-circuit cases, including a recent bankruptcy court decision from the Southern
7 District of Texas addressing the issue of postpetition interest, Reply at 2-6, the Court sees no
8 reason to depart from the clear holding and reasoning of *Cardelucci*. *See Ad Hoc Comm.*, 614
9 B.R. at 356 (“[B]ecause the Ninth Circuit has directly decided the issue in *Cardelucci*, the cited
10 out-of-circuit authority does not give rise to a substantial ground for difference of opinion
11 justifying an interlocutory appeal.”).

12 Nor is the Court persuaded by Appellant’s argument that its narrow interpretation of
13 *Cardelucci* is necessary to harmonize *Cardelucci* with the Ninth Circuit’s decisions in *L&J*
14 *Anaheim Assocs. v. Kawasaki Leasing Int’l, Inc.*, 995 F.2d 940 (9th Cir. 1993); *Platinum Capital,*
15 *Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070 (9th Cir. 2002); and *Pacifica*
16 *L 51 LLC v. New Invs., Inc. (In re New Investments, Inc.)*, 840 F.3d 1137 (9th Cir. 2016).
17 Appellant’s Br. at 33. As the Court previously explained, *L & J Anaheim* did not specifically
18 address postpetition interest. *Ad Hoc Comm.*, 614 B.R. at 355. *L & J Anaheim* did
19 interpret Section 1124 of the Bankruptcy Code to mean that ““Congress define[d] impairment in
20 the broadest possible terms,”” and that ““any alteration of [a creditor’s] rights constitutes
21 impairment even if the value of the rights is enhanced.”” *Id.* at 355-356 (quoting *L & J Anaheim*,
22 995 F.2d at 942). But the Ninth Circuit’s interpretation of Section 1124 does not support
23 Appellant’s argument that the claims of its members must be considered impaired by the Plan
24 unless postpetition interest is paid at the contractual or state statutory rate. Appellant’s Br. at 21-
25.

26 “[C]reditors’ entitlements in bankruptcy arise in the first instance from the underlying
27 substantive law creating the debtor’s obligation, subject to any qualifying or contrary provisions of
28 the Bankruptcy Code.” *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443,

1 444 (2007) (quoting *Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 20 (2000)). As the Court
2 previously explained, this means that there is no impairment where the Bankruptcy Code—and not
3 the Debtors’ Plan—modifies alleged non-bankruptcy contractual rights. *Ad Hoc Comm.*, 614 B.R.
4 at 356. In other words, “a creditor’s claim outside of bankruptcy is not the relevant barometer for
5 impairment; we must examine whether the plan itself is a source of limitation on a creditor’s legal,
6 equitable, or contractual rights.” *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 204 (3d Cir. 2003).

7 Section 502(b)(2) of the Bankruptcy Code disallows unsecured claims for postpetition
8 interest. And so ordinarily, holders of unsecured claims (like Appellant’s members) have no right
9 under the Bankruptcy Code to include such interest as part of their allowed claims. However,
10 because the Debtors are presumed to be solvent, *Cardelucci* directs that the Debtors pay
11 postpetition interest on allowed unsecured claims (at the “Federal Judgment Rate”). 285 F.3d at
12 1234. And like the Plan here, the plan in *Cardelucci* “provided for payment in full” of the
13 unsecured claims at issue by using the “Federal Judgment Rate.” *Id.* at 12333.² Because the
14 Bankruptcy Court correctly applied Ninth Circuit precedent in ruling that the Federal Interest Rate
15 is the postpetition rate applicable to the claims of Appellant’s members, the Court **AFFIRMS** the
16 Bankruptcy Court’s rulings on postpetition interest.

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22 ² Appellant’s contention that *In re Sylmar Plaza* and *In re New Investments* are in tension with
23 *Cardelucci* is also misplaced. Appellant’s Br. at 33. Like *L & J Anaheim*, *Sylmar Plaza* did not
24 address the appropriate rate of postpetition interest on an unsecured claim in a solvent debtor case.
The Ninth Circuit held only that it was appropriate for a debtor to take advantage of the
25 Bankruptcy Code’s reinstatement provisions, even if doing so would adversely impact the
creditor’s contractual or nonbankruptcy rights. *Sylmar Plaza*, 314 F.3d at 1075 (rejecting the
26 argument “that a plan intended to nullify the consequences of a default (thereby avoiding the
higher post-default interest rate) does not meet the purposes of the Bankruptcy Code”). Similarly,
New Investments dealt with cure and reinstatement provisions of the Bankruptcy Code that allow a
27 debtor to “return to pre-default conditions . . . only by fulfilling the obligations of the underlying
loan agreement and applicable state law.” 840 F.3d at 1142. But Appellant’s members’ claims
28 are not being cured and reinstated by the Plan. Nothing in the Ninth Circuit’s decision in *New
Investments* invalidates the Plan’s provision for the payment of Appellant’s member’s claims plus
postpetition interest at the Federal Interest Rate, in accordance with *Cardelucci*.

1 **IV. CONCLUSION**

2 The Court **AFFIRMS** the Bankruptcy Court's PPI Memorandum and PPI Order. The
3 Clerk is directed to terminate this appeal and close the case.

4 **IT IS SO ORDERED.**

5 Dated: 5/20/2021

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7 HAYWOOD S. GILLIAM, JR.
United States District Judge

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